IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUIT NO. 1315 OF 1995

M/s. Shree Laxmi Trading Corporation Plaintiff

v/s.

M/s. Meridian Agro Industries Defendant

Mr. D.A. Athawale for Plaintiff

Mr. P.C. Mankad for defendant

CORAM:- ANOOP V. MOHTA, J

DATED:- 18TH JUNE, 2007

JUDGEMENT

.1 The suit is for recovery of the commission and incidental charges as per the rules and regulations of the GRAIN RICE, OILSEEDS, MERCHANTS ASSOCIATION, BOMBAY such as freight, loading, unloading, shortage, bank commission, demurrage, labour, cartage, postal and interest thereon totally a sum of Rs. 1,14,582.41 paise and interest at the rate of 24% per annum on the said principle amount from 1-4-94.

.2 Though served defendants failed to file any written statement in the matter. Therefore, matter is listed under the caption of 'undefended suit' since 26-4-2000.

.3 The plaintiff have filed affidavit in lieu of examination in chief dated 12-4-2007 along with documents. By another affidavit dt. 16-6-2007 the Plaintiff have averred through Accountant that Plaintiff has been maintaining computerized general ledger. He further averred that he has fed in the data in the said computerised ledger of all the transactions that took place between plaintiff and defendant no. 1 during the said period from 16-7-92 to 31-3-94. He has further deposed that he has been working with the Plaintiff for the last 20 years i.e. since about 1987. He has further deposed that in or about October 1990 the computers were introduced in the Plaintiff's office for maintaining the accounts. The said computerised general ledger has been maintained regularly by the plaintiff. He has further deposed that all the transactions entered into in the said computerised general ledger have been correctly recorded. He took out the print out of the part of the general ledger pertaining to defendant no.1. He

identified the print out of general ledger which has been placed by the plaintiff in the present suit. He has further endorsed that entries made therein are correct and accurate. He has further deposed that said print outs are based on the data fed in by him by the said computer during the regular course of business of plaintiff.

.4 Having complied with the requirement of Section 65(B) under the Indian Evidence Act, 1872 by this affidavit to consider print out on a paper recorded or copied/produced by computer or through computer. According to this such documents shall be deemed to be also the documents for the purpose of evidence as contemplated under the Act. Having once complied with Section 65(B) the print outs of the computerised general ledger as placed on record are basic documents which are taken on record and marked collectively as 'P1'. After perusal of those printouts the closing balance as on 31-3-94 as reflected was 1,14,582/- as claimed in the present suit.

.5 By notice dated 16-5-94 the plaintiff made demand of the said amount. Though received there is no dispute or reply to the said demand. The copy of

said notice dated 16-5-94 is also part of the record.

.6 The affidavit in chief of the Partner of te Plaintiff further supports the claim as made and raised. The averments made in the plaint as well as in this affidavit remain uncontroverted. The plaintiff in the circumstances proved the case based on the averments as well as the contents of the documents including the documents as recorded above.

.7 The learned Advocate appearing for the defendant submits that he has no instructions in the matter inspite of repeated communications. Admittedly they have not denied by reply nor filed any written statement. He further submitted that defendant no. 2 one of the Director of the defendant no. 1 has expired. Defendant no. 3 and 4 are other Directors of the company i.e. defendant no. 1. Considering this there is nothing on record to oppose the averments made in the plaint as well as in the affidavit. There is no challenge raised even to the documents filed by the plaintiff. The death of defendant no. 2 even otherwise noway affect the basic claim as raised against defendant no. 1, 3 & 4.

.8 Taking all this into account the suit is

decreed in so far as principle claim is concerned. The claim of defendant in respect of interest at the rate of 24% is on higher side. Considering the facts and circumstances the plaintiff is entitled to claim the interest only at the rate of 9% per annum from 1-4-94 and further throughout accordingly till the realisation of the amount.

.9 Therefore, following decree:

The defendants are directed to pay the plaintiff a sum of Rs. 1,14,582.51 paise and interest at the rate of 9% per annum on the said principle amount from 1-4-94 and thereafter throughout till realisation. Suit is decreed accordingly. No cost.

(ANOOP. V. MOHTA)